IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 19954 of 2005(A)

OS.898/1995 of I ADDL.SUB COURT, KOZHIKODE

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PETITIONER:

M.P. RAVEENDRAN, S/O. KUNHIMOOTHAN,
MOZHERI PUTHEN VEEDU, KALLADIKODE P.O.,
PALAKKAD DISTRICT.

BY ADV. SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENT:

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1. M/S. SHAKTHI FINANCE LIMITED,
475, DR. NANJAPPA ROAD, COIMBATORE,
REPRESENTED BY ITS GENERAL MANAGER (OPERATIONS)
S. ANAND.

2. T.P. UMMERKUTTY, S/O. ABDURAHIMAN
THAZHA PATHALATHU VEEDU,
BADAGARA, KOZHIKODE DISTRICT.

R1 BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.19954 of 2005

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Dated: 8th June, 2007

JUDGMENT

This Writ Petition is defective on the reason that the 2nd respondent is not yet served with notice. But I find that the 2nd respondent is only a co-judgment debtor in the execution proceedings and that he had no interest in the property which was proposed to be attached and sold by the 1st decree-holder who has already entered appearance. The property belongs to the writ petitioner and the ground which is seriously raised by him is that his property is not liable to be attached and sold in view of Section 60(1)(c) of the C.P.C. He is only an agriculturist and the property is his dwelling house.

2. The decree in this case which has attained finality was a mortgage decree and the property is 97 cents of land together with residential building. The Subordinate Judge is yet to consider the issue whether the residential building and the land appurtenant thereto is exempted from attachment and sale. In fact in this case there is no question of any attachment since the sale is going to be conducted on the basis of a mortgage decree. Whatever that be, this court while admitting the Writ Petition and granting stay imposed a condition that the petitioner shall pay a sum of Rs.One lakh within

one month from 4.7.2005. The petitioner did not make that payment. He filed an application for enlargement of time. Considering that application the court peremptorily directed that the amount shall be paid within one week from 2.12.2005. Obviously that payment was also not made on time as could be seen from I.A.No.11383/05 wherein it is stated that the petitioner has been able to raise only Rs.25,000/-. The petitioner has to comply with the conditions imposed by this court for granting stay before he can aspire for any discretionary reliefs from this court. Since it is seen that the issue raised by the petitioner is yet to be considered by the learned Subordinate Judge, there is no reason for disposal of the Writ Petition being delayed further. Accordingly, the Writ Petition will stand disposed of issuing the following directions:

The petitioner shall pay a sum of Rs.One lakh as ordered by this court within seven days from today. If payment is made as above, the court below will take a decision on the question of saleability of the residential building of the petitioner within another three weeks. Till such time a decision is taken on that question, the residential building of the petitioner will not be sold.

srd **PIUS C.KURIAKOSE, JUDGE**

After I delivered the judgment, Mr.G.Hariharan, counsel for the petitioner appeared before me submits that the matter has become infructuous. Recording the above submission, the Writ Petition will stand dismissed on the ground that it has become infructuous.

srd **PIUS C.KURIAKOSE, JUDGE**